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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JENNIFER MARIE SMITH, Defendant and Appellant.	E068320 (Super.Ct.No. 16CR070399) OPINION

APPEAL from the Superior Court of San Bernardino County. Lisa M. Rogan, Judge. Affirmed.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Jennifer Marie Smith appeals after the transfer of her mandatory supervision from Stanislaus County to San Bernardino County. Upon the transfer, the San Bernardino County Probation Department recommended additional terms and conditions of probation imposed by San Bernardino County in order to ensure officer safety and offender compliance. Defendant objected to imposition of the new conditions, including the addition of an electronic devices search condition. On appeal, defendant argues (1) the San Bernardino County Superior Court had no authority to modify the terms of her mandatory supervision because no change in circumstances existed to justify the modification, and (2) the electronics-search condition is unconstitutionally overbroad in violation of her due process rights. We reject these contentions and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND[1]

Sometime in 2013, using the Internet, defendant ordered checks in her name that included the bank account information of a couple who lived in Stanislaus County. The fraudulent checks did not contain the couples' address, but an address in Dehli, California. The fraudulent checks were also a different design than the checks used by

[1] A summary of the factual background is taken from the preliminary hearing transcript.

the couple. Defendant used four of the fraudulent checks, totaling several hundred dollars, at various businesses in Stanislaus and Merced counties.

On May 15, 2015, an information was filed in Stanislaus County charging defendant with four counts of misuse of personal identifying information (Pen. Code,[2] § 530.5, subd. (a); counts 1, 4, 6, and 9), three counts of second degree burglary (§ 459; counts 2, 7 and 10), and four counts of possession of a completed check (§ 475, subd. (c); counts 3, 5, 8, and 11). The information also alleged that defendant had suffered one prior prison term (§ 667.5, subd. (b)).

On May 4, 2016, pursuant to a negotiated plea agreement, defendant pled no contest to one count of misuse of personal identifying information. In return, the remaining allegations were dismissed and defendant was promised a split three-year sentence with one year to be served in county jail and two years on mandatory supervision.

On May 20, 2016, the Stanislaus County Superior Court sentenced defendant in accordance with her plea agreement to one year in county jail and two years on mandatory supervision on various terms and conditions of supervision.

On December 9, 2016, the Stanislaus County Probation Department filed a notice and motion to transfer defendant's case to San Bernardino County. After the San Bernardino County Probation Department verified that defendant had permanently

[2] All future statutory references are to the Penal Code unless otherwise stated.

relocated to San Bernardino, the Stanislaus County Superior Court granted the motion to transfer defendant's case to San Bernardino County.

On March 21, 2017, the San Bernardino County Superior Court accepted jurisdiction over defendant and the matter was set for a probation modification hearing.

On April 14, 2017, the San Bernardino County Probation Department filed a report requesting additional terms and conditions in San Bernardino County in order to ensure officer safety and offender compliance be added to defendant's mandatory supervisory terms and conditions. The proposed new terms and conditions were as follows:

"043A Carry at all times a valid California Department of Motor Vehicles Driver's License or identification card containing your true name, age and current address; display such identification upon request by any peace officer and not use any other name for any purpose without notifying the Probation Officer.

"008A Keep the Probation Officer informed of place of residence and cohabitants, give written notice to the Probation Officer twenty-four (24) hours prior to any changes. Prior to any move provide written authorization to the Post Office to forward mail to the new address.

"011A Neither use nor possess any controlled substance unless prescribed to you by a medical professional. Medical documentation is to be given to the Probation Officer.

"019A Not associate with persons known to defendant to be convicted felons or anyone actively engaged in criminal activity, or the co-defendant(s), except those involved in recovery/rehabilitative services.

"007 Not leave the State of California without first obtaining written permission of the Probation Officer.

"017A Participate in rehabilitative programs as directed by the Probation Officer.

"08F Permit visits and searches of places of residence by agents of the Probation Department and/or law enforcement for the purpose of ensuring compliance with the terms and conditions of probation; not do anything to interfere with this requirement, or deter officers from fulfilling this requirement, such as erecting any locked fences/gates that would deny access to Probation Officers, or have any animals on the premises that would reasonably deter, threaten the safety of, or interfere with officers enforcing this term.

"004A Report to the Probation Officer in person immediately or upon release and thereafter as directed. If you are removed from the United States, you are to report to the Probation Officer by phone or mail within fourteen (14) days of your release from immigration custody and inform Probation of your address and phone number.

"006 Seek and maintain gainful employment or attend school, and keep the Probation Officer informed of status of employment or school.

"042B Submit to a request by any peace officer to provide your true name, date of birth, supervision status, and search terms.

"010B . . . [¶] Submit to search and seizure by a government entity of any electronic device that you are an authorized possessor of pursuant to PC 1546.1(c)(10).

"001N Supervision by Probation Department to begin upon release from County Jail. This includes early, straight, and those released into alternative custody."

On April 20, 2017, the San Bernardino County Superior Court held a modification hearing of defendant's supervisory terms. At that time, defense counsel objected to the additional mandatory supervision terms recommended by the San Bernardino County Probation Department. The prosecutor argued, "I think all of them are appropriate if the Court feels that they are reasonably related to the rehabilitation of the defendant. I think in reading them, I don't think they are inappropriate. I think that both statute and case law seek to accomplish the goal with probation. So I think all of them are appropriate, and that if [defendant] wishes to transfer into this county for the remainder of her rehabilitation, these are terms which she should abide by." Defense counsel responded that "the People are incorrect about the Court's authority to add these in, when she has not been violated." The court disagreed with defense counsel and explained: "No. The Court can impose terms and conditions at any time during the probationary period, if the Court believes that those are terms and conditions that would facilitate her in successful completion of probation. That's the discretion of the Court when she goes on probation." After defense counsel continued to disagree, the court continued the matter.

The continued modification hearing was held on May 4, 2017. At that time, defense counsel continued to object to the additional terms and conditions of mandatory

supervision, arguing the court had no authority to modify defendant's supervisory terms. Defense counsel further argued that imposing the additional terms "would be beyond the scope of the original plea intent" and original sentence. Defense counsel also objected to the electronics-search condition as being unconstitutionally overbroad. The prosecutor responded that the court had authority to impose additional terms. The court agreed with the prosecutor and modified the terms of defendant's mandatory supervision, striking term Nos. 007 and 001N and modifying term No. 006. The court noted, "The Court's understanding is that mandatory supervision is under the complete control of probation, and that they have the authority to impose terms as they deem necessary under mandatory supervision." The court also pointed out that the terms are reasonably related to defendant's crimes and will "allow for successful completion of mandatory probation." As to the electronics-search condition, the court stated: "the Court finds that based on the crime that she has pled to for identity theft, I find that that's an important, especially in today's world, that a lot of this is done by way of electronic means, gaining access to people's identity, utilizing those identities by way of the internet, the Court will find that is not overbroad, because I know it says any electronic device, but to try to narrow that is an impossibility really. So I'm going to leave it in place."

On May 22, 2017, defendant filed an amended notice of appeal.

III

DISCUSSION

A. *Additional Supervisory Conditions Due to Change in Circumstance*

Defendant argues the court abused its discretion by imposing the additional terms of defendant's mandatory supervision because the court's modification was not based on a change in defendant's circumstances. Specifically, defendant asserts that the transfer of supervision to San Bernardino County did not constitute a change in circumstances, and absent a change in circumstances, her mandatory supervision conditions could not be modified. The People respond the court had authority to modify defendant's supervisory terms because a change in circumstances, namely defendant's move from Stanislaus County to San Bernardino County, justified the modification.

A trial court generally has discretion in setting the appropriate terms and conditions of probation, parole, or supervised release: "In general, the courts are given broad discretion in fashioning terms of supervised release, in order to foster the reformation and rehabilitation of the offender, while protecting public safety. [Citations.] Thus, the imposition of a particular condition of probation is subject to review for abuse of that discretion. 'As with any exercise of discretion, the court violates this standard when it imposes a condition of probation that is arbitrary, capricious or exceeds the bounds of reason under the circumstances. [Citation.]' [Citation.]" (*People v. Martinez* (2014) 226 Cal.App.4th 759, 764.)

Section 1203.9, subdivision (a)(1), governs the transfer of probation cases from one county to another and provides in pertinent part: "[W]henever a person is released on probation or mandatory supervision, the court, upon noticed motion, shall transfer the case to the superior court in any other county in which the person resides permanently, meaning with the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record." Pursuant to subdivision (b) of section 1203.9, "The court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer."

The procedure for transferring a case to another county is outlined in California Rules of Court, rule 4.530. (See § 1203.9, subd. (f) [judicial council shall promulgate rules of court procedures for the transfer of probation cases].) Subdivision (h)(1)(B) of rule 4.530 provides "The receiving court and receiving county probation department may impose additional local fees and costs as authorized." Further, subdivision (g) of rule 4.530 entitled "Transfer" provides in subsection (6), "Upon transfer the probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans to the probation officer of the receiving county."

Neither section 1203.9 nor the California Rules of Court, rule 4.530 specifically address whether probation conditions can be modified upon transfer to another county.[3] Section 1203.3, subdivision (a), states "The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence." This section "broadly states the court's power to modify." (*People v. Cookson* (1991) 54 Cal.3d 1091, 1100 (*Cookson*).) A defendant is subject to notice, a hearing, and reasons for the modification to be placed on the record before the modification. (§ 1203.3, subd. (b).)

A court can modify a term of probation at any time before the expiration of that term and need not wait until a probation violation occurs. (*Cookson, supra*, 54 Cal.3d at p. 1098; see *People v. Leiva* (2013) 56 Cal.4th 498, 505.) In *Cookson*, the defendant was ordered to pay restitution for diverting construction funds at the time that his probation was granted, but the probation department set up an incorrect payment schedule resulting in insufficient funds being paid by defendant on the restitution when his probation term was set to expire. (*Cookson*, at p. 1094.) The superior court extended the time for probation in order for the defendant to be supervised while completing the payments on restitution. (*Id*. at pp. 1094-1095.)

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[3] We leave to the Legislature clarification as to whether a transfer to another county qualifies in itself as a change in circumstances that authorizes a change in probation conditions, like the ability of the receiving county to change the fees and costs.

The California Supreme Court noted that " 'An order modifying the terms of probation *based upon the same facts* as the original order granting probation is in excess of the jurisdiction of the court, for the reason that there is no factual basis to support it.' " (*Cookson, supra*, 54 Cal.3d at p.1095.) Although the defendant had complied with all of the probation conditions, and the miscalculation of the monthly payments was solely the fault of the probation officer, our Supreme Court determined "the Court of Appeal correctly determined that a change in circumstance could be found in a fact 'not available at the time of the original order,' namely, 'that setting the pay schedule consistent with [the] defendant's ability to pay had resulted in defendant's inability to pay full restitution as contemplated within the original period of probation." (*Ibid*.)

Here, the People assert the change in circumstances was that defendant moved her permanent place of residence from Stanislaus County to San Bernardino County. The San Bernardino County Probation Department justified the change in conditions in the probation report based on "[t]hese terms and conditions are commonly used in San Bernardino County in order to ensure officer safety and offender compliance." The prosecutor argued that additional terms "are reasonably related to the rehabilitation of the defendant" and "appropriate" in San Bernardino County. The trial court explained that the additional terms and conditions were reasonably related to defendant's crimes and "would facilitate [defendant's] successful completion of [mandatory] probation." The court also noted that the probation department had "the authority to impose terms as they deem necessary under mandatory supervision."

Here, the San Bernardino County Probation Department's suggested changes to the conditions were reasonably related to ensure officer safety and defendant's compliance and rehabilitation. The additional terms of mandatory supervision, as noted previously, certainly were aimed at ensuring officer safety in San Bernardino County, as well as, defendant's rehabilitation. Defendant voluntarily moved to San Bernardino County and the San Bernardino County Probation Department stated specific reasons why the additional terms should be imposed in San Bernardino County—a large, spread-out county, and the largest county in the continental United States. The court could modify the conditions based on this concern. The San Bernardino County Superior Court was entitled to consider defendant's new circumstances when the case was transferred to San Bernardino County, and to apply conditions it had found appropriate in supervising San Bernardino County probationers.

Furthermore, defendant does not contend the additional conditions are unrelated to the crime for which she was convicted or are not reasonably related to preventing future criminality or not necessary in aiding defendant's rehabilitation. (See *People v. Olguin* (2008) 45 Cal.4th 375, 379-380 [test for valid probation conditions].) The additional conditions were reasonably related to the San Bernardino County Probation Department's ability to supervise and rehabilitate defendant. The additional conditions promoted the San Bernardino County Probation Department's ability to identify, supervise, and rehabilitate defendant. Furthermore, some of the additional conditions were no different than the conditions imposed in Stanislaus County requiring defendant to violate no law;

cooperate and abide by all reasonable directives of the probation officer; and submit to immediate search of person, home, and property by a law enforcement officer.

Based on the foregoing, the San Bernardino County Superior Court was justified in modifying the terms of defendant's mandatory supervision. The new additional conditions were reasonably related to the goal of maintaining supervision and safety of the officers, as well as, defendant's offenses and rehabilitation.

B. *Electronics-search Condition*

Defendant also contends the probation condition requiring her to submit her electronic devices to search or seizure by law enforcement officers is unconstitutionally overbroad and in violation of her Fourth Amendment rights and her rights to privacy. For the reasons explained below, we disagree.

1. Applicable principles

A grant of probation is an act of clemency in lieu of punishment. (*People v. Moran* (2016) 1 Cal.5th 398, 402.) Probation is a privilege, and not a right. A court has broad discretion to impose "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, . . . and generally and specifically for the reformation and rehabilitation of the probationer . . . ." (§ 1203.1, subd. (j); *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121 (*Carbajal*).) "If a probation condition serves to rehabilitate and protect public safety, the condition may 'impinge upon a constitutional right otherwise enjoyed by the probationer, who is "not entitled to the same degree of constitutional

protection as other citizens." ' " (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1355 (*O'Neil*).)

A condition of probation will not be upheld, however, if it (1) has no relationship to the crime of which the defendant was convicted, (2) relates to conduct that is not criminal, and (3) requires or forbids conduct that is not reasonably related to future criminality. (*Olguin, supra,* 45 Cal.4th at pp. 379-380; see *People v. Lent* (1975) 15 Cal.3d 481, 486.) Our high court has clarified that this "test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*Olguin,* at p. 379.)

However, "[j]udicial discretion to set conditions of probation is further circumscribed by constitutional considerations." (*O'Neil, supra,* 165 Cal.App.4th at p. 1356.) "A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) "The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153; accord, *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346 (*Pirali*).)

We generally review the imposition of probation conditions for an abuse of discretion, and we independently review constitutional challenges to probation conditions de novo. (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723 (*Appleton*).) Based on the foregoing, we address the merits of defendant's arguments below.

2. Analysis

Defendant's electronics-search condition states "Submit to a search and seizure by a government entity of any electronic device that you are an authorized possessor of pursuant to PC [section]1546.1(c)(10)." Initially, we note the issue of the validity of an electronics-search condition under *Lent* and its progeny is pending before our high court. (See, e.g., *People v. Ermin* (July 10, 2017, H043777) [nonpub. opn.], review granted Oct. 25, 2017, S243864; *People v. Nachbar* (2016) 3 Cal.App.5th 1122 (*Nachbar*), review granted Dec. 14, 2016, S238210; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted Apr. 13, 2016, S232849; *In re Ricardo P.* (2015) 241 Cal.App.4th 676 (*Ricardo P.*), review granted Feb. 17, 2016, S230923.) We also note that currently there is a split of authority regarding the validity of broad electronics-search conditions of probation, and those cases are also pending before the California Supreme Court. (See *People v. Trujillo* (2017) 15 Cal.App.5th 574 (*Trujillo*), review granted Nov. 29, 2017, S244650; *People v. Bryant* (2017) 10 Cal.App.5th 396 (*Bryant*), review granted June 28, 2017, S241937; *In re R.S.* (2017) 11 Cal.App.5th 239, review granted July 26, 2017, S242387; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted Mar. 9, 2016, S232240;

In re J.E. (2016) 1 Cal.App.5th 795 (*J.E.*), review granted Oct. 12, 2016, S236628.) Until we receive further direction, we must undertake to resolve this case as best we can.

Our colleagues in Division One of this court addressed a challenge by a defendant subjected to an electronics-search probation condition in *Trujillo*, *supra*, 15 Cal.App.5th 574, which we discuss in detail for its persuasive value. (Cal. Rules of Court, rule 8.1115(e)(1).) The defendant's crime had no relation to the probation condition, and the main issue was whether the condition was reasonably related to future criminality. The court explained that "a probation condition 'that enables a probation officer to supervise his or her charges effectively is . . . "reasonably related to future criminality." ' [Citations.] Because the probation officer is responsible for ensuring the probationer refrains from criminal activity and obeys all laws during the probationary period, the court may appropriately impose conditions intended to aid the probation officer in supervising the probationer and promoting his or her rehabilitation. [Citations.] 'This is true "even if [the] condition . . . has no relationship to the crime of which a defendant was convicted." ' " (*Trujillo*, at p. 583, italics omitted.)

In *Trujillo*, our colleagues held the trial court did not abuse its discretion: "If the court permits this young convicted felon to avoid prison through probation despite his violent offenses, the court has the authority to take steps to help ensure Trujillo will remain crime free and that public safety objectives are satisfied. As our high court has observed, the purpose of requiring Fourth Amendment search waivers as a probation condition is ' " 'to determine not only whether [the probationer] disobeys the law, but

also whether he obeys the law. Information obtained [from an unexpected and unprovoked search] afford[s] a valuable measure of the effectiveness of the supervision given the defendant . . . .' " ' [Citations.] The trial court had a reasonable basis to conclude the most effective way to confirm Trujillo remains law abiding is to permit his electronic devices to be examined, rather than relying on a meeting or a telephone conversation. This required Fourth Amendment waiver is not open-ended, it applies only during the probation period. If Trujillo is successful at his probation, the Fourth Amendment waiver will terminate and his electronic devices will again be completely private. The court made the factual determination that the electronics-search condition is necessary to provide appropriate supervision for Trujillo while he is on probation. Under *Lent* and *Olguin*, the court did not err in reaching this conclusion." (*Trujillo, supra,* 15 Cal.App.5th at pp. 583-584.) The *Trujillo* court further rejected the notion, suggested in cases such as *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*), that the Trujillo defendant's failure to use an electronic device in committing his crimes or the lack of any connection between such a device and the crimes rendered the search condition unreasonable as a matter of law. (*Trujillo,* at p. 584.)

We are persuaded by *Trujillo*'s reasoning and apply it in this case. Moreover, pending further guidance from the Supreme Court, we take the *Olguin* opinion at its word: "A condition of probation that enables a probation officer to supervise his or her charges more effectively is . . . 'reasonably related to future criminality.' " (*Olguin, supra,* 45 Cal.4th at pp. 380-381.) In this case, defendant used the Internet to commit her

crimes by ordering fraudulent checks using another person's account information. The trial court was aware that defendant had pled no contest to identity theft and that "a lot of this is done by way of electronic means." The court also explained that identity-type theft crimes are committed by "gaining access to people's identity," and "utilizing those identities by way of the internet." The electronics-search condition at issue here allows law enforcement to supervise defendant more effectively. Her conditions of probation include violating no laws; not possessing dangerous or deadly weapons; not using or possessing controlled substances unless prescribed by a medical professional; not knowingly associating with convicted felons or anyone actively engaged in criminal activity or the codefendant; participating in rehabilitative programs as directed by her probation officer; and seeking and maintaining gainful employment or attending school. Searching defendant's electronic devices will assist law enforcement in determining whether she is complying with these conditions. Indeed, given the current ubiquity of electronic communications and interactions, an electronics-search condition may well be the only way for a probation officer to discover the bulk of the information relevant to potential criminality and compliance with other conditions of mandatory supervision. A defendant engaged in illegal activities, for example, is much more likely to have digital photographs or communications relating to such activities stored on an electronic device than print photographs and written correspondence stored at home. The electronics-search condition is therefore reasonably related to future criminality. (See *In re P.O.*

(2016) 246 Cal.App.4th 288, 295; see *J.E.*, *supra*, 1 Cal.App.5th at p. 801; *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1176-1177.)

Defendant emphasizes the broad intrusive nature of the electronics-search condition, the invasiveness of any such searches, and the consequent burden on her privacy interests. (See generally *Riley v. California* (2014) 573 U.S. __ [134 S.Ct. 2473] (*Riley*).) We disagree that such a burden makes the electronic-search condition unreasonable. In our view, the electronics-search condition (and consequent burden) is akin to the standard "three-way" search condition—of a defendant's person, residence, and vehicles—routinely imposed as a condition of probation and required by regulation as a condition of parole. (See, e.g., *People v. Ramos* (2004) 34 Cal.4th 494, 505-506; *People v. Burgener* (1986) 41 Cal.3d 505, 532, disapproved on another ground in *People v. Reyes* (1998) 19 Cal.4th 743, 753; *In re Binh L.* (1992) 5 Cal.App.4th 194, 202-203.) One appellate court recognized that a computer hard drive is the digital equivalent of its owner's home in terms of the breadth of private information involved. (*People v. Michael E.* (2014) 230 Cal.App.4th 261, 277, citing *United States v. Mitchell* (11th Cir. 2009) 565 F.3d 1347, 1351.) It follows that, just like a defendant's home, a computer hard drive is properly and reasonably the subject of a search condition. Defendant has not shown the trial court's imposition of the electronics-search condition encompassing such digital information was unreasonable.

However, " 'A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.' [Citation.] 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*Pirali*, *supra*, 217 Cal.App.4th at p. 1346.) Here, the record reflects some evidence of the legitimate purpose of the restriction, as we have discussed above: preventing future criminality by promoting effective supervision. We may also identify a burden, in the abstract, on defendant's general right to privacy based on the possibility of searching her electronic devices. But, as a defendant under mandatory supervision, her privacy rights are "diminished," i.e., they may more readily be burdened by restrictions that serve a legitimate purpose. (See *Nachbar*, *supra*, 3 Cal.App.5th at p. 1129; *J.E.*, *supra*, 1 Cal.App.5th at p. 805.) On the current record, we conclude the burden on defendant's privacy right is insufficient to show overbreadth, given the legitimate penological purpose shown for searching defendant's electronic devices.

Additionally, as our colleagues did in *Trujillo*, we reject defendant's argument that the electronics-search condition is unconstitutionally overbroad as violating her fundamental privacy rights under *Riley*, *supra*, 573 U.S. __, [134 S.Ct. 2473]. In *Riley*, the Unites States Supreme Court held that the warrantless search of a suspect's cell phone

implicated and violated the suspect's Fourth Amendment rights. (*Riley*, at p. __ [134 S.Ct. at pp. 2482-2483].) The court explained that modern cell phones, which have the capacity to be used as mini-computers, can potentially contain sensitive information about a number of areas of a person's life. (*Id*. at p. __ [134 S.Ct. at p. 2489].) The court emphasized, however, that its holding was only that cell phone data is subject to Fourth Amendment protection, "not that the information on a cell phone is immune from search." (*Riley*, at p. __ [134 S.Ct. at p. 2493].)

In *Trujillo*, the appellate court distinguished *Riley*, and followed authority explaining that the overbreadth analysis is materially different from the warrant requirement at issue in that case. (*Trujillo*, *supra*, 15 Cal.App.5th at p. 587.) The court observed that probationers do not enjoy the absolute liberty to which law-abiding citizens are entitled, and that courts routinely uphold broad probation conditions permitting searches of a probationer's residence without a warrant or reasonable cause. (*Id*. at pp. 587-588.) Like the defendant in *Trujillo* (*id*. at pp. 588-589), defendant does not challenge the probation condition authorizing officers to conduct random and unlimited searches of her residence at any time and for no stated reason, and she made no showing that a search of her electronic devices would be any more invasive than an unannounced, without-cause, warrantless search of her residence. Here, as in *Trujillo*, the record supports a conclusion that the electronics-search condition is necessary to protect public safety and to ensure defendant's rehabilitation during her supervision period, and a routine search of defendant's electronic data "is strongly relevant to the probation

department's supervisory function." (*Id*. at p. 588.) We adopt a similar conclusion as *Trujillo*: "Absent particularized facts showing the electronics-search condition will infringe on [defendant's] heightened privacy interests, there is no reasoned basis to conclude the condition is constitutionally overbroad or to remand for the court to consider a more narrowly drawn condition." (*Id*. at p. 589.)

Defendant suggests we should follow the decisions invalidating the condition as overbroad in *Appleton*, *supra*, 245 Cal.App.4th 723, *In re J.B.* (2015) 242 Cal.App.4th 749 (*J.B.*), *In re Malik J.* (2015) 240 Cal.App.4th 896 (*Malik J.*), and *Ricardo P.*, *supra*, 241 Cal.App.4th 676. These cases are distinguishable or do not support defendant's argument under the circumstances of this case.

J.B., *supra*, 242 Cal.App.4th 749, *Malik J.*, *supra*, 240 Cal.App.4th 896, and *Ricardo P.*, *supra*, 241 Cal.App.4th 676 all considered a juvenile probation condition requiring the minor to submit his electronic devices for warrantless searching and to provide all passwords to such devices. (*J.B.*, at p. 752; *Malik J.*, at p. 900; *Ricardo P.*, at pp. 886-887.) "A juvenile 'cannot refuse probation [citations] and therefore is in no position to refuse a particular condition of probation.' " (*Erica R.*, *supra*, 240 Cal.App.4th at p. 914.) Moreover, "[i]f [an adult] believes the conditions of probation are more onerous than the potential sentence, he or she may refuse probation and choose to serve the sentence. [Citation.]" (*Olguin*, supra, 45 Cal.4th at p. 379.) Here, defendant could have chosen to reject mandatory supervision. However, she read and understood the supervisory conditions and agreed to comply with the terms and conditions of her

mandatory supervision. Furthermore, the juvenile cases relied upon by defendant involved passwords and family member devices, which are not at issue here, and defendant makes no argument that the manner of searching should be limited.

Defendant's reliance on *Appleton*, *supra*, 245 Cal.App.4th 717 is also misplaced. In *Appleton*, the court found a penological justification in preventing the defendant from "us[ing] social media to contact minors for unlawful purposes." (*Id*. at p. 727.) Given that limited justification, the court struck a general electronics-search condition and remanded the matter to the trial court to craft a narrower condition. (*Ibid*.) Here, the penological justification is not so limited, and *Appleton* is inapplicable. Moreover, in *Appleton*, the court rejected an electronics-search condition on the premise that *Riley* held that police could not ordinarily search a smartphone incident to arrest, and that, absent other exigent circumstances, a warrant was required to make such a search. However, the court in *Trujillo*, *supra*, 15 Cal.App.5th 574, and *Nachbar*, *supra*, 3 Cal.App.5th 1122 disagreed with *Appleton*. We recognize that our high court has granted review in *Trujillo* and *Nachbar* pending resolution of *Ricardo P.*, *supra*, 241 Cal.App.4th 676. Pending further direction from our high court, we continue to adhere to the views expressed in *Trujillo* and *Nachbar*, namely, that the "privacy concerns voiced in *Riley* are inapposite in the context of evaluating the reasonableness of a probation condition." (*Nachbar*, at p. 1129.)

The court in *Appleton* struck a probation condition allowing probation access to recordable media and computers based on the fact personal information may be on such devices, thus making the intrusion too broad. (See *Appleton, supra,* 245 Cal.App.4th at pp. 728-729.) As we have noted, the court in *Appleton* relied heavily on the discussion in *Riley*, about the privacy interests an individual has in his or her smartphone, to find a search warrant was required to access this and similar devices. The *Riley* court did not hold that electronic devices are immune from search, but only that they cannot be searched incident to lawful arrest as an ordinary exception to the warrant requirement. (See *Riley*, *supra*, 573 U.S. __ [134 S.Ct. 2473].) However, the instant case does not involve an exception to the warrant clause, as was the case in *Riley*. Rather, it involves a specific supervisory condition imposed by the trial court that restricts the exercise of the constitutional rights of defendant, who must be supervised for the rehabilitation and prevention of crime. *Riley* is therefore inapposite since it arose in a different Fourth Amendment context. *Riley* also did not consider the constitutionality of conditions of probation, parole, or mandatory supervision. Persons on probation and mandatory supervision do not enjoy the absolute liberty to which every citizen is entitled and the court may impose reasonable conditions that deprive an offender of some freedoms enjoyed by law-abiding citizens. (*United States v. Knights* (2001) 534 U.S. 112, 119 [probationers]; see *In re Q.R.* (2017) 7 Cal.App.5th 1231, 1238, review granted Apr. 12, 2017, S240222 [*Riley* involved a person's "preconviction expectation of privacy"].)

While searches involving electronic devices may raise unique issues of privacy not found in searches of more traditional property categories, we see no need to depart from our well-established treatment of search conditions whenever the condition implicates electronic devices. As *J.E.* explained, "courts have historically allowed parole and probation officers significant access to other types of searches, including home searches, where a large amount of personal information—from medical prescriptions, banking information, and mortgage documents to love letters, photographs, or even a private note on the refrigerator—could presumably be found and read. [Citations.] In cases involving probation or parole house search conditions, we have found no instances in which courts have carved out exceptions for the same type of information [the minor] argues could potentially be on his electronics." (*J.E.*, *supra*, 1 Cal.App.5th at p. 804, fn. 6.) As we have explained, nothing in the record here justifies narrowing the challenged electronics-search condition.

We decline to follow the cases cited by defendant. These cases declined to read *Olguin* as sanctioning imposition of electronics-search conditions without evidence the probationer is likely to use his or her electronic devices or social media for proscribed activities.

Based on the foregoing reasons, we conclude the electronics-search condition is not unconstitutionally overbroad and does not substantially limit defendant's Fourth Amendment rights and her rights to privacy.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.